STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-659

December 17, 1999

PUBLIC UTILITIES COMMISSION
Amendments to Chapter 322

ORDER ADOPTING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we amend certain portions of Chapter 322, the rule that governs interactions among transmission and distribution utilities (T&D utilities) and competitive electricity providers (CEPs). The amendments alter the partial payment section of the original rule, limit the provision on retaining enrollments when customers move to a new location, modify the customer data provision to comply with recently enacted legislation, simplify the contract approval process, and make minor language changes consistent with other rules.

II. BACKGROUND

By orders dated March 16, 1999 and April 9, 1999, the Commission adopted Chapter 322 of its rules. This rule governs the interactions during T&D utilities and CEPs involving metering, billing, collections, and customer enrollments. The amendments to the rule result from ongoing efforts to implement electric industry restructuring. These efforts have revealed areas of the existing rule in which amendments are either necessary or desired. We discuss below each of the amendments to the rule.

III. RULEMAKING PROCESS

On September 28, 1999, the Commission issued a Notice of Rulemaking, proposing several amendments to the existing rule. Prior to the hearing on the proposed amendments, the Commission received written comments from Central Maine Power Company (CMP), Bangor Hydro-Electric Company (BHE), and Maine Public Service Company (MPS). In addition to these utilities, the Dirigo Electric Cooperative[1] participated in the hearing. CMP, BHE, MPS, Dirigo and Energy Atlantic (EA) filed written comments after the hearing.

[1] Dirigo Electric Cooperative members are: Eastern Maine Electric Cooperative; Fox Islands Electric Cooperative; Houlton Water Company; Kennebunk Light and Power District; Madison Electric Works; Swan's Island Electric Cooperative; and Van Buren Light and Power District.

IV. DISCUSSION OF AMENDMENTS

A. Definitions (Section 1)

The amended rule contains minor changes to the definitions of "aggregator" and "broker" to be consistent with statutory language and terminology used in other rules. We have added definitions of "current charge" and "due date" in conjunction with changes to the allocation of partial payment provisions. *See* section IV(D), below. We have also added a definition of "customer–specific information" to comply with a recent legislative directive regarding the provision by utilities of customer data to CEPs. *See* section IV(F) below.

B. Applicability of Rule (Section 2(A))

This provision specifies that the Chapter does not apply to standard offer providers unless otherwise stated. As a result, we have modified several provisions throughout the rule to clarify that they apply to standard offer providers.

C. Prior Past Due Charges (Section 3(E))

This provision specifies that, under consolidated utility billing, the utility is responsible for collecting CEP past due amounts for one bill following the final bill. As a result of some of the comments on the proposed rule, we have clarified that this provision does not apply to past due amounts associated with standard offer service. The utility has the responsibility to attempt to collect such amounts consistent with its own collection policies.

D. Allocation of Payments (Section 6 (C))

1. Partial Payments

We amend the partial payment provision of the rule as proposed by CMP, BHE, and MPS (collectively, IOUs) in their supplemental written comments. Under this approach, partial payments are allocated in the following order:

- Past due charges associated with T&D and standard offer service, with the oldest arrearage paid first,
- Past due charges of the CEP with the oldest arrearage paid first,
- Current charges associated with T&D and standard offer service,
- Current charges of the CEP, and
- As between T&D and standard offer charges of the same vintage, the T&D charge is paid first.

The existing rule specifies that partial payments will be allocated first to the oldest month in which an unpaid charge exists, and within that month, to the T&D charge, followed by the CEP charge. In our initial order adopting Chapter 322, we explained that this allocation approach balances consumer protection concerns (i.e. avoiding disconnection for nonpayment of utility charges) with promoting broad participation in Maine's market. *Order Adopting Rule and Statement of Factual and Policy Basis,* (Chapter 322) Docket No. 98-810 at 19 - 21 (April 9,1999). However, as a result of utility requests to waive certain provisions of Commission rules, we decided that it was necessary to propose changing the partial payments provision so that the utility bill, including all past due amounts, would be paid first and then the CEP bill would be paid.

Our decision to propose the rule change resulted from a CMP request for a waiver from Chapter 81, section 8 (A)(1), which prohibits utilities from including charges for non-basic service on their disconnection notices (Docket No. 99-479). Because CEP charges are for non-basic service, CMP asked for a waiver to allow it to include the CEP overdue amount on its disconnection notices. CMP explained that such a waiver was required as a result of the operation of the existing Chapter 322's partial payment provision. Because this provision allocates payments to the oldest month first, a customer, in many circumstances, would have to pay more than the overdue utility amount to avoid disconnection (this occurs because a certain portion of every payment to the utility would be transferred to the CEP for payment of its past due amount). CMP requested a waiver of the Chapter 81 provision to avoid customer confusion; the waiver would allow it to specify the total amount of money (both utility and CEP charges) that must be paid to avoid disconnection. Without the waiver, only the utility charges could be specified. If the customer paid this amount, and a portion was transferred to the CEP pursuant to Chapter 322, the customer would remain subject to disconnection because the utility would not have been paid in full.

MPS sought a Chapter 81 waiver for the same reasons specified by CMP. However, BHE stated that CMP's proposed solution (i.e. waiver of Chapter 81) might not be the best approach. Instead, BHE proposed that the Commission waive the partial payment provision of Chapter 322 when a customer is at risk of disconnection due to non-payment of its T&D bill so that the T&D past due amounts would be satisfied before the CEP amounts. Once the delinquency scenario was remedied, the allocation method would return to the oldest amount first.

Upon review of the waiver requests, we proposed to amend the rule to apply partial payments first to the T&D utility's charges. We made this proposal based on our view that CMP's proposed solution regarding disconnection notices created an insurmountable problem regarding the statutory prohibition on disconnecting service for nonpayment of generation service charges. 35-A M.R.S.A. § 3203(4). The intent of this provision is to prevent customers from losing access to a necessary monopoly service as a result of not paying a bill for a competitive service. The addition of CEP charges to the amount due on disconnection notices, as proposed by CMP and MPS, would clearly violate the intent of the statutory prohibition, because customers

would be presented with the threat of disconnection if they failed to pay the CEP, as well as the T&D, bill. We also viewed BHE's approach (i.e., waiving the allocation scheme when in a "disconnection scenario") as problematic in that it would be an exception that would basically cause the partial payment allocation provision to be meaningless, because utilities may issue disconnection notices when customers do not pay their bills within 30 days. In addition, CMP and MPS indicated that they could not develop the systems necessary to implement the BHE approach by the beginning of retail access. As a result of the problems raised by the utilities' requests for waivers, we proposed to amend the rule so that partial payments are first allocated to T&D utility charges.

In the initial round of written comments, CMP did not oppose the proposed allocation whereby utility arrears are paid first. BHE and MPS, however, commented that the Commission should maintain the provision in the existing rule. The primary concern raised by these utilities involves the circumstance in which a customer pays its full bill near or shortly after the due date. In this circumstance, the utility would allocate the payment to the now overdue utility arrears and then to the current utility charge, creating an arrears on the CEP account. This "crossing in the mail" problem could potentially confuse many customers who typically pay their bills at or around the stated due date and expect that the payment to both the utility and CEP are current.[2]

All three utilities opposed the provision in the proposed rule that would allocate CEP payments first to current charges, stating that application to prior amounts first is generally the practice and consistent with customer understanding and intent.

The three utilities also noted that the rule is silent on the allocation of partial payments between the utility and standard offer service, stating that such a provision is necessary for uniform processing of payments through bad debt write-offs and for proper accounting of the portion of bad debts attributable to standard offer service.

During the hearing, there was a great deal of discussion on the benefits and detriments of the allocation method in the existing rule as opposed to that in the proposed rule. It was generally acknowledge that the existing rule presents the problems discussed above, while the proposed provision would result in the considerable "cross in the mail" problem.

In supplemental comments, the IOUs agreed upon a new approach that would avoid the problems with the allocation methods in both the existing and proposed rules. Under this approach, partial payments are allocated first to utility and CEP overdue charges, and then to current charges. The overdue T&D charges (and

[2] BHE and MPS also commented that it would be difficult to program their computer systems to accommodate the allocation provision in the proposed rule by March 1, 2000.

standard offer charges) are paid first and then the overdue CEP charges. The proposal also contains an allocation between T&D and standard offer service of the same vintage, whereby utility charges are paid first. Dirigo commented that the Commission should adopt general guidelines, but allow utilities the flexibility to determine the best method for its service territory. EA filed comments supporting the existing rule's provision as fairer to CEPs.

As stated above, we adopt the current proposal of the IOUs. As a general matter, we support uniform approaches in interactions among utilities and CEPs to make it easier and less costly for CEPs to serve the Maine market. However, because of their unique circumstances and consistent with our general practice,[3] we will allow consumer-owned utilities (COUs) to petition the Commission for acceptance of a different allocation method.

The method we adopt today maintains some of the benefit of the existing rule, while preventing the major problems with the provisions in both the existing and proposed rules. The amended rule is more favorable to CEPs than the proposed rule, in that CEP overdue amounts are paid before current utility charges. By allocating payments to utility overdue amounts first, the approach does not cause the conflict with the statutory prohibition on disconnection for non-payment of CEP charges. This is because only T&D charges need to be stated on the disconnection notice as the overdue amount that must be paid to avoid disconnection. The adopted method also avoids the "cross in the mail" problem, because payments are allocated first to the past due amounts of both the utility and the CEP before current charges are paid.

The amended rule also appropriately reverses the allocation among CEPs from that contained in the proposed rule. The proposed rule would have allocated payments first to current CEP charges and then to past due CEP amounts. We agree with commenters that the general practice is for oldest past due amounts to be paid first and that this is what customers likely intend and expect.

The method in the amended rule also clarifies the allocation related to standard offer service. Payments of past due amounts are allocated first to utility and standard offer service, and then to CEP charges. This is appropriate because customers can be disconnected for non-payment of utility and standard offer charges. Among the utility and standard offer service, payments are allocated to oldest past due amounts first, and past due amounts of the same vintage are allocated first to the utility service.

[3] For example, we provided COUs flexibility in the settlement process. *See* Ch. 321, § 2(D).

We note that the allocation between utility and standard offer service has virtually no impact on the customers,[4] standard offer providers, or utilities. The allocation has no impact on customers because they can be disconnected pursuant to the same procedures for non-payment of both utility and standard offer charges. Ch. 301, § 4(A)(B). The allocation does not impact standard offer providers because, by rule, they are held neutral to uncollectible risk. Ch. 301, § 4(C). The utilities are unaffected because they are obligated to act to collect both their own and standard offer arrears in the same manner.

The allocation method thus affects only the accounting of arrearages and write-offs, and, consequently, the amount of uncollectibles attributable to the utilities as opposed to those associated with standard offer service. We find allocation first to the utility account to be reasonable in that it avoids the need for utility computer systems to be programmed for a pro rata allocation, a task that may be difficult and costly. Additionally, the allocation to oldest amount first avoids a large imbalance among utility and standard offer uncollectibles and provides utilities with incentives to collect all amounts. Finally, by designating a specified standard offer uncollectible amount, the allocation could impact the amount of the pre-determined uncollectible percentage that would be factored into future standard offer rates. *See* Ch. 301, § 4(D). However, there is no requirement that this pre-determined percentage be the amount of uncollectibles allocated to standard offer service pursuant to this rule. We, thus, maintain discretion to establish future pre-determined uncollectible percentages for purposes of standard offer bids and prices based on all relevant factors.[5]

2. Payment Arrangements

The amended rule states that, when a payment arrangement or budget plan is in effect, payments should be allocated first to the amount due under the arrangement or plan and then to the competitive electricity provider charges (oldest to newest).

The issue of allocating payments when a customer is on a payment arrangement was also raised by the waiver requests discussed above. The problem arises under any partial payment provision because, by definition, payment arrangement customers are not paying their accounts in full. As a result, if the partial

[4] The allocation would affect the relative amounts owed for utility and standard offer service stated on customers bills. However, the consequences to the customer of not paying for standard offer service are the same as not paying for utility service.

[5] In its comments, BHE asked where non-basic T&D charges fall in the payment allocation scheme. This issue does not appear to be properly addressed in a rule that governs the interactions between utilities and CEPs. However, this rule does specify the order of allocations of payments among utilities and CEPs with the logical inference that non-basic T&D charges would be paid after utility and CEP charges.

payment provision applied, payment arrangement customers who pay their agreed-upon monthly T&D bill plus their current CEP bill would not actually have their CEP bill paid in full. This is because the partial payment rule would operate to allocate payments to the overdue arrearages. Thus, customers might believe they had paid their combined bill in full, but would not have paid their entire CEP bill. To address this problem, we proposed that, when a payment arrangement is in effect on an account which is being served by a CEP, the partial payment rule would not apply and payments would be allocated first to the amounts owed under the arrangements. No commenters objected to this approach, and we include it in the amended rule.

E. Customer Moves to New Location (Section 7(D)(2))[6]

The existing rule specified that when customers move to a new location within their current T&D utility's service territory, the customer's CEP will be automatically maintained (if the utility has not received a notice to enroll from a new CEP). Ch. 322, § 8(B)(2). During discussions within the Electronic Business Transactions (EBT) working group,[7] it was revealed that this provision would be problematic in the event the new location did not have a meter that was compatible with the CEP's rates (e.g.,the customer is currently charged a time-of-use rate by its CEP and the new location does not have a time-of-use meter). For this reason, we proposed that the new location provision apply only if there is a meter that is compatible with the CEP's rates. If not, the customer will be transferred to the standard offer.

We received no comments on these proposed changes and, thus, adopt them in the amended rule.

F. Transfer of Customer Data (Section 9)

The amended rule contains changes to the customer authorization requirements regarding the provision of customer specific data by utilities to CEPs.

The existing rule stated that before a CEP requests customer information from a utility, it must obtain customer authorization pursuant to 35-A M.R.S.A § 3205(3)(I). This statutory provision specified that a utility may not release proprietary customer information without prior written authorization from the customer. During its

[6] In the existing rule, the subsection "Procedure when Delivery Service Changes," which includes the provision regarding moves to new locations, is contained in section 8. Section 8 generally governs the cancellation of service. In the amended rule, we have moved the provisions on delivery service to section 7 because the subject matter is more closely related to the general topic of enrollments.

[7] The EBT working group was established by the Commission in Docket No. 98-522.

last session, the Legislature repealed this provision and replaced it with the following language:[8]

> A transmission and distribution utility may not release any customer-specific information to a licensed competitive electricity provider unless the provider produces sufficient evidence, as defined by the commission by rule, that the provider has obtained the customer's authorization.

P.L. 1999, ch. 237 (codified at 35-A M.R.S.A. §3203 (16-A)).

As a result of this legislation, we have added provisions to the rule that specify when customer-specific information may be released.

As mentioned above, we have added a definition of "customer-specific information." The definition is the same as that contained in Chapter 820 and includes a particular customer's usage, technical configuration and type of utility service.

We have also added requirements for both CEPs and T&D utilities. The amended rule requires CEPs to obtain customer authorization prior to requesting customer-specific information from the utility. The rule specifies that the authorization may be written, obtained electronically or, for lower usage customers, the authorization may be satisfied by a conspicuous statement in the terms of service document (required by Chapter 305 for customers with demands below 100 kW) that, by choosing the CEP, the customer authorizes the release of usage data. This provision is intended to reduce the burden on CEPs to obtain individual customer authorizations from residential and small commercial customers. The only change from the proposed rule is the specification that customer authorization may be provided electronically. This provision is consistent with our consumer protection rules that allow customers to choose a CEP electronically. Ch. 305, § 4(D).

Consistent with the statute quoted above, utilities, under the amended rule, must obtain evidence that the CEP has complied with the customer authorization requirement. However, it is our view that the primary responsibility regarding customer authorization should rest with the CEP, the entity that is seeking the data for its own business purposes. For this reason, the amended rule states that the utilities' requirement is satisfied by a provision in the CEP/utility contract or a written certification that obligates the CEP to seek customer data from the utility only after complying with

[8] The provision was contained in the section of the statute on standards of conduct between utilities and their marketing affiliates. Because the provision applies beyond utility affiliates, it appears to have been misplaced. The new provision is in the licensing section of the statute.

the Commission's rules on customer authorization.[9] The proposed rule referenced only a provision in the CEP-utility contract. CMP and MPS pointed out in their comments that aggregators and brokers are not required to enter a contract with the T&D utility. Accordingly, we include a written certification, in addition to a contractual provision, as a means by which a utility may obtain evidence of CEP compliance with the customer authorization rules.

We have also reorganized this section of the rule into two subsections: 1) transfer of customer-specific data; and 2) routine business data. Routine business data refers to the everyday data transfer between utilities and CEPs as specified in the EBT standards (e.g. enrollment and billing data). The amended rule specifies that the enrollment of a customer constitutes authorization for the utility to send routine business data to the CEP. This is appropriate because ongoing current information is necessary for the CEP to provide service, and the customer should thus be deemed to have consented to the provision of this data. Additionally, we have modified the language to clarify that costs of both sending and receiving data pursuant to the EBT standards shall be the responsibility of the entity that sends or receives the data. We received no comments on these amendments, and they are unchanged from the proposed rule.

Finally, we have specified that the "transfer of customer-specific data" section applies to aggregators, brokers, and standard offer providers, and that the routine business data section applies to standard offer providers. These provisions are necessary because section 2(B) of the rule states that, unless otherwise stated, the provisions of the rule do not apply to aggregators, brokers, and standard offer providers. The failure to apply the customer data provisions to the entities indicated above was an oversight in the original rule. We received no comments on these amendments, and they are unchanged from the proposed rule.

G. Approval of Contracts (Section 10)

Section 10 of the amended rule requires T&D utilities and CEPs to enter into a contract that defines their respective obligations. The existing rule required these contracts to be filed for Commission approval and specified that a decision on the contract will be made within 60 days. The Commission convened a working group to develop standard form contracts between utilities and CEPs (Docket No. 99-170). During discussions within that group, questions arose as to the need for specific approval of every contract that conforms to the standard form contract. We have, thus, reconsidered this provision and amend the rule to require contracts that conform to the standard form be filed only for informational purposes and not be subject to approval. However, contracts that deviate from the standard form would require Commission approval. This approval is warranted to assure that utilities are treating all CEPs fairly and are acting in the interest of their ratepayers. To streamline the process, we have reduced the initial review period to 30 days and have delegated approval authority to

[9] We intend to modify the standard CEP-utility contract developed in Docket No. 99-170 to include such a provision.

our Director of Technical Analysis. We received no comments on these amendments, and, except for a clarification that the provision applies to standard offer providers, they are unchanged from the proposed rule.

Accordingly, we

O R D E R

1. That the attached Chapter 322, Metering, Billing, Collections, and Enrollment Interactions among Transmission and Distribution Utilities and Competitive Electricity Providers, is hereby adopted;

2. That the Administrative Director shall file the adopted Rule and related material with the Secretary of State;

3. The Administrative Director shall send copies of this Order and the attached rule to:

A. All electric utilities in the State;

B. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

C. All persons listed on the service list or filed comments in the Rulemaking, *Amendments to Chapter 322*, Docket No. 99-659;

D. All persons listed on the service list or filed comments in the Rulemaking, *Metering, Billing, Collections, and Enrollment Interactions among Transmission and Distribution Utilities and Competitive Electricity Providers* (Chapter 322), Docket No. 98-810;

E. All persons listed on the service list or who filed comments in the Inquiry, *Inquiry into Provisions for Interactions Among Transmission and Distribution Utilities and Competitive Electricity Providers Regarding Metering, Billing and Collection, Service Commencement, and Service Contract,* Docket No. 98-482;

F. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 17th day of December, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond